

2007-3557

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 18 ENTITLED "BUSINESSES" BY REPEALING ARTICLE XV THEREOF ENTITLED "STREET PERFORMERS AND ART VENDORS," AND REPLACING THEREWITH A NEW ARTICLE XV ENTITLED "STREET PERFORMERS AND ARTIST VENDORS," AUTHORIZING STREET PERFORMERS AND ARTIST VENDORS ON "LINCOLN ROAD" (AS DEFINED HEREIN) FOLLOWING RECEIPT OF A PERMIT SUBJECT TO CERTAIN CONDITIONS AND PERMIT FEES; PROVIDING DEFINITIONS, SETTING FORTH TERMS, CONDITIONS AND REGULATIONS FOR PERMITS ISSUED TO STREET PERFORMERS AND ARTIST VENDORS; PROVIDING FOR ENFORCEMENT, SUSPENSION OR REVOCATION; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 18 entitled: "Businesses" is hereby amended by repealing Article XV thereof entitled "Street Performers and Art Vendors," and replacing therein the following new Article XV, Chapter 18 Miami Beach City Code entitled "Street Performers and Artist Vendors" to read as follows:

ARTICLE XV. STREET PERFORMERS AND ARTIST VENDORS

Sec. 18-901. Definitions.

Art means painting, photography, sculpting, sketching and crafts. "Art" as herein defined shall not be construed to permit the display or sale of any item intended or suitable for human consumption.

Artist Vending and Street Performance Artist Zone is defined as a sidewalk area which has been selected and identified by the City Manager or designee as the specific artist vendor/street performance artist area at which all artist vending/street performance art in the Lincoln Road Area shall occur by a specific permittee.

Artist means one who engages in an activity defined to be art by this Article.

Lincoln Road Area is defined as all public rights-of-way within that area bounded on the east by the west side of Washington Avenue, on the west side by the east side of Alton Road and on the north by the south side of Lincoln Lane North and the south by the north side of Lincoln Lane South.

Offense shall mean either an uncontested notice of violation issued by a code compliance officer or a finding of violation by a special master.

Permittee means a person who has obtained a permit pursuant to this article.

Right-of-way is defined as land dedicated, deeded, used or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress or egress, or other purpose by the public, certain designated individuals of governing bodies.

Street as used herein includes any primary accessway such as a street, road, lane, highway, avenue, boulevard, or cul-de-sac and also includes all of the land lying between the right-of-way lines as delineated on a plat showing such streets, whether improved or unimproved.

Street performance includes the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing, and puppetry on public property.

Street Performance artists means persons who engage in street performance activities to offer entertainment or special demonstrations (often outlandish or unique) for those around them, often standing in areas accessible to pedestrians and public rights-of-way.

Street vending of art or artist vending as used herein, includes the display, creation and/or sale on public property of art by a permittee. Street vending of art shall be limited to art created by the permittee.

Sec. 18-902. Intent of Article.

The intent of this article is to regulate street performances and artist vending protected by the First Amendment to the United States Constitution on the public right-of-way in the Lincoln Road Area.

Sec. 18-903. Permit required.

It shall be unlawful for any person to engage in any street performance or artist vending on public property in the Lincoln Road Area without first obtaining a permit as required by this article. This section does not alter or interfere with the applicability and/or enforcement of any other provisions of this Code, including but not limited to, sections 70-4, 70-41, 74-1, 82-1, 142-894(a), and 142-1361 concerning vending and peddling.

Sec. 18-904. Permit application.

No artist vending or street performance on Lincoln Road shall be allowed unless specifically authorized by a permit. Applications for a street performance artist or artist vending permit shall be made at the city occupational licensing office, and shall be subject to the review and approval of that office, or such other office designated by the city manager for such purposes.

1. Only those applications on city forms will be accepted. If the application form is complete and consistent with this Article, the applicant agrees to abide by the terms of this Article, and the application fee is paid, the application will be approved, unless the applicant's permit has previously been revoked or suspended, and the applicant has evidenced a failure to conform to the rules and requirements herein.
2. The applicant shall provide a declaration under penalty of perjury that the art for which the applicant seeks a permit to sell is of his or her own creation, and that the applicant neither employs other persons to produce, nor is employed by another person to produce, the art item for which he seeks certification.
 - a. In consideration of the application, the occupational license office, or other office or committee that the city manager designates, shall examine representative samples of the applicant's work for the purposes of verifying the information set forth in the application. After such examination, and for the purposes of further investigation, the occupational license office, or other designated office or committee, may 1) request documentation from the applicant, including but not limited to receipts for the purchase of arts or crafts or other supplies used to create the art for which the applicant seeks a permit to sell; and/or 2) designate one or more of its members to visit the studio or workshop of the applicant to view the applicant's facilities and to further verify that the art for which the applicant submits certification is of his or her own creation.
 - b. Only art for which a declaration is made and/or certification submitted may be sold in conjunction with an issued permit.
3. The application shall be submitted to the city occupational licensing office as follows:
 - a. For first time artist vendor applicants, not later than forty-five (45) days prior to the date of the lottery date for the permit period; or
 - b. For street performance artist applicants and applications by a previous artist vendor applicant for the same art, not later than thirty (30) days prior to the lottery date for the permit period.
4. Not later than thirty (30) days after the filing of a completed, first-time application for an artist vending permit, or not later than fifteen (15) days after the filing of a completed application for street performance artist or a completed, subsequent application by an artist vendor for the same art, the applicant shall be notified by the finance department regarding the decision on the issuance or denial of the permit, or eligibility for a permit in the event a lottery is held pursuant to subsection 8 herein. If the permit is denied, the applicant shall be provided with a statement of the reasons for denial. A denial may be appealed to the city

manager or his designee within ten (10) days of the issuance of the denial Appeals from a decision of the city manager or the manager's designee shall be to the appellate division of the circuit court in accordance with the Rules of Appellate Procedure.

5. Permits are non-transferable.
6. The permit shall be effective for a maximum of three months from the date of its issuance.
7. The city may charge an application processing fee in an amount set forth administratively.
8. If the number of applications for permits exceeds the number of available zone locations, a permit shall be issued to applications selected by a quarterly lottery conducted by the City's occupational licensing office. The available zone locations shall be assigned randomly to the selected applications, as set forth in Section 18-905 (1) (b) and (c).
 - a. Each artist vendor and street performance artist shall be limited to one zone location.
 - b. Lotteries will be held by the occupational licensing office approximately fifteen (15) days prior to the start of each quarter (January, April, July and October).
 - c. The occupational licensing office shall implement a procedure for the reassignment of any permits voluntarily surrendered or involuntarily suspended or revoked.

Sec. 18-905. Permit regulations and prohibitions.

Street performances and artist vending shall be conducted in accordance with the following rules and requirements:

1. Permitted Artist Vending and Street Performances shall only be conducted in designated zones.
 - a. Zone locations will be determined prior to the permit period. The Zone location list shall be available for review at the Occupational License Office 10 business days prior to the permit period.
 - b. A total of twelve (12) Artist Vending and Street performance artist Zones shall be available for allocation of a permit each quarter; six of the zones shall be designated for the category of artist vendors and six of the zones shall be designated for the category of street performance artist; only one permit shall be assigned to each zone; the six street performance artist and the six artist vending zones shall be assigned randomly.
 - c. If the number of permit applications received by the occupational license office is less than the number of available zones for either the artist vendor or the street performance artist category, the occupational license office shall make available the zone to permit applicants from the other category, but at no time shall the total number of zones permitted exceed twelve.
 - d. Zone locations available for permits may change from time to time as deemed necessary by the city manager or his designee.

- e. The permitted street performance artist or artist vending zone shall not exceed 36 square feet of space.
 - f. Permit holders cannot impede pedestrian traffic; must maintain a clear pedestrian path of five feet; and cannot impede access to adjoining businesses or uses.
2. No street performance artist or artist vendor shall create a fire hazard or connect to any electric outlets or power sources. The street performance artist or artist vendor must provide their own power sources, if any is required. No generators, car, truck, motorcycle, or boat batteries or any other power sources deemed hazardous to the public health, safety or welfare by a police or code officer shall be permitted. Extension cords are prohibited.
 3. No street performance artist or artist vendor shall engage in the application of tattoos or body piercing, nor shall use fire or an animal as part of his/her act while on public property.
 4. No food or drink, whether made by a permit holder or otherwise shall be displayed or offered for sale, or sold through the street performance artist or artist vendor permit.
 5. The city manager or his designee may cause the immediate removal or relocation of all or parts of the art and/or equipment associated with a permit in emergency situations or for safety considerations.
 - a. Upon the issuance of a hurricane warning by the county, the permittee shall forthwith cease operation and remove all items associated with the art vending or street performance permit from the public right-of-way. The issuance of such a hurricane warning shall constitute an emergency situation as referenced in this division. As additional means of enforcement, the city may remove any equipment and/or merchandise found on public property two hours after the issuance of a hurricane warning. Any and all costs incurred by the city for removal and/or storage of art vending or street performance equipment and/or merchandise shall be the responsibility of the permittee. The city is not responsible for any damages or loss of equipment or merchandise which is lawfully confiscated.
 - b. If the zone assigned for a street performance artist or artist vending is needed for a special event, municipal repairs or other city business, or relocation or suspension is otherwise in the best interest of the public, the City Manager or designee may temporarily or permanently relocate the permittee to a different zone or temporarily suspend (if no alternative is available) the street performance or artist vending activity.
 6. The city manager or designee shall develop and impose administrative rules pertaining to this permit. All permittees shall comply with the administrative rules; failure to do so shall result in the application of fines and penalties as described in section 18-909 of this article.

Sec. 18-906. Indemnification.

All permit holders shall agree to defend, indemnify and hold harmless the city and its officers, agents and employees from any suit, actions on claims arising out of or in any way connected with the activities permitted pursuant to this article, except for any claims or liability arising from the negligence or misconduct of the city, its agents, officers or employees.

Sec. 18-907 Hours of operation.

1. Street performances and artist vending are prohibited daily between midnight and 8 a.m. except on Saturday and Sunday when they are prohibited between 2 a.m. and 8 a.m.
2. All tables, displays, signs and inventory used shall be removed no later than 30 minutes after the permitted time period has expired.

Sec 18-908. Disclaimer, display, and expiration.

1. Disclaimer. On each permit the following words shall appear: The issuance of this permit does not constitute an endorsement by City of Miami Beach or articles sold pursuant to the terms of this permit.
2. Display. The city shall issue a permit to an artist vendor or street performance artist which shall contain a photograph of the permittee, contact information and, for artist vendors, a description of the art that is permitted to be sold by the artist vendor. The permit shall be displayed by the permittee at all times when selling or soliciting offers to purchase any art or craft work or while performing.
3. Expiration. All permits shall clearly list the expiration date which shall be no greater than 90 days from the date of issuance.

Sec. 18-909. Enforcement, suspension/revocation of permit.

Any violation of this article shall be subject to the following fines and penalties:

1. First offense: \$50.00;
2. Second offense in the previous twelve month period: \$100.00; ineligible for application for permit for one quarter.
3. Third offense in the previous twelve month period: \$250.00; immediate revocation of permit; ineligible for application for permit for two quarters.

Notwithstanding the above, the City may also direct the artist vendor or street performance artist to immediately cease and desist the activity in violation of this article.

Failure to immediately comply with the order to cease and desist the activity in violation of this article shall result in additional fines and may result in suspension or revocation of the permit. Following suspension or revocation of a permit, upon written request of the permit holder, the city manager or the manager's designee shall hold a hearing within ten days after receipt of such request, at which time the manager or designee will hear the facts constituting the basis for the modification, suspension or revocation, hear the statements for or against such action by interested persons, and then make a decision affirming, modifying, or reversing the action to be taken with respect to the permit. Such decision may be announced orally at the hearing, or in writing within ten days after the hearing. Appeals from a decision of the city manager or the manager's designee shall be to the appellate division of the circuit court in accordance with the Rules of Appellate Procedure.

Sec. 18-910. Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.

1. A violator who has been served with a notice of violation shall elect either to:
 - a. Pay the civil fine in the manner indicated on the notice; or
 - b. Request an administrative hearing before a special master, appointed as provided in section 30-36 by the city commission, to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation.
2. The procedures for appeal shall be as set forth in section 102-385.
3. The special master may not waive or reduce fines set by this Article if a violation of this ordinance is established.
4. If the named violator after notice fails to pay the civil fine or timely fails to request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties may be assessed accordingly.
5. Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction as provided in F.S. § 162.11.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the 21st day of April, 2007.

PASSED and ADOPTED this 11th day of April, 2007.

ATTEST:

Munt Parcker
CITY CLERK

[Signature]
MAYOR

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 4/3/07
City Attorney Date